

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES)
v.) 2:22-CV-1148
WILLIAM KAETZ,)
Defendant.)

MEMORANDUM ORDER

Before the Court is Defendant William Kaetz's motion for discovery and appointment of counsel (ECF 156). The motion is denied for the following reasons.

As Mr. Kaetz correctly states in his motion, he is not entitled to discovery as a matter of course but as a matter of good cause shown. *United States v. Johnson*, No. 08-374, 2017 WL 3034928, at *1 (W.D. Pa. July 18, 2017) (Conti, J.) (citing *Bracy v. Gramley*, 520 U.S. 899, 904 (1997) and 28 U.S.C. § 2254 Rule 6(a)); see ECF 156, p.1. Mr. Kaetz has not shown good cause. Instead, he has made conclusory assertions that the discovery he seeks will prove he was “targeted for being a United States Citizen doing his duty.” That is insufficient to give the Court “reason to believe that [Defendant] may, if the facts are fully developed, be able to demonstrate that he is entitled to relief.” *Bracy*, 520 U.S. at 908-909. Further, Mr. Kaetz has not yet filed his amended Section 2255 motion, making it “far from clear that he is permitted under Rule 6 to obtain any discovery whatsoever.” *In re Platts*, 573 Fed. Appx. 87 (3d Cir. 2014) (denying motion because movant had presented claim in a prior Section 2255 motion). Accordingly, Mr. Kaetz’s motion is denied without prejudice to Mr. Kaetz to make the appropriate showing to justify discovery in his Section 2255 motion. *Johnson*, 2017 WL 3034928, at *2.

Similarly, Mr. Kaetz's motion for appointment of counsel is denied without prejudice. "It is well established that there is no right to appointed counsel in a federal habeas corpus case. However, a court may appoint an attorney to assist a

financially eligible § 2255 petitioner when the Court determines that the interests of justice so require such an appointment. This is a matter of the Court's discretion." *Warren v. United States*, No. 13-270, 2019 WL 4010559, at *9 (W.D. Pa. Aug. 26, 2019) (Hornak, C.J.). In making this assessment, "the district court must first decide if the petitioner has presented a nonfrivolous claim and if the appointment of counsel will benefit the petitioner and the court." *Id.* (cleaned up). But, again, because Mr. Kaetz has not yet filed his amended motion, it is difficult for the Court to determine whether his claims are nonfrivolous at this time.

Accordingly, it is **ORDERED** that Mr. Kaetz's second motion for discovery and assistance of counsel (ECF 156) is **DENIED** without prejudice. If Mr. Kaetz's amended Section 2255 motion reflects good cause for discovery or appointment of counsel, the Court will re-visit these issues at that time.

DATE: January 3, 2023

BY THE COURT:

/s/ J. Nicholas Ranjan

United States District Judge